

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

TELECARE MENTAL HEALTH
SERVICES OF WASHINGTON, INC.,

Defendant.

No. 2:21-cv-01339-BJR

**ORDER (1) GRANTING
DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT; AND
(2) DENYING PLAINTIFF’S MOTION
FOR PARTIAL SUMMARY
JUDGMENT**

I. INTRODUCTION

This matter comes before the Court on (1) a Motion for Summary Judgment filed by Defendant Telecare Mental Health Services of Washington, Inc. (“Telecare”); and (2) a Motion for Partial Summary Judgment filed by Plaintiff Equal Employment Opportunity Commission (“EEOC”). EEOC filed this lawsuit on behalf of Claimant Jason Hautala, claiming Telecare violated the Americans with Disabilities Act (“ADA”), having denied Hautala employment on the basis of his leg impairment. The Court has now reviewed the briefs filed in support of and opposition to both motions, including supplemental briefing on the issue of whether Claimant was

1 a “qualified individual with a disability” at the time Telecare rescinded its conditional offer of
2 employment, and finds and rules as follows.

3 II. BACKGROUND

4 In 2019, Claimant Jason Hautala applied for a position as a registered nurse with Telecare’s
5 Short-Term Evaluation & Treatment Center in Shelton, Washington. The Shelton facility provides
6 mental health emergency care and “specializes in rehabilitation and recovery for adult residents
7 who have been involuntarily committed due to having a chronic or serious mental health disorder
8 and are experiencing acute mental health crises.” Decl. Tyvonne Berring, ¶ 7. “An RN at Shelton
9 provides acute inpatient services such as providing direct care in patient rooms, administering
10 medications, and performing CPR and physical restraints of violent and assaultive clients when
11 the need arises.” Def.’s Mot. at 2 (citing Nam Decl. ¶ 3, Ex. A, Wilcox Dep. 56:12-23, 140:14-21;
12 ¶ 4, Ex. B, Hautala Dep. 119:15-19.). Patients can become “very violent and the violence can be
13 unprovoked and ... out of the blue,” and the RN position “is a very physical job,” requiring nurses
14 who are trained in and able to perform crisis intervention techniques. Nam Decl. ¶ 5, Ex. C,
15 Broadbent Dep. 44:22-45:3; Wilcox Dep. 122:13-21.

16 Based on Hautala’s resume and an interview, Telecare extended an offer of employment,
17 conditioned on a physical examination to determine his fitness for the position. Nam Decl. ¶ 6, Ex.
18 D, Berring Dep. 95:8-11. To complete this exam, Hautala saw physician assistant Devon
19 Rutherford, who concluded that Hautala was “able to fulfill requirements although requires
20 assistance with long periods of standing/walking.” (Nam Decl. ¶ 18, Ex. P, Rutherford Exam
21 Results). The reference to limitations on standing and walking was to Hautala’s permanent leg
22 impairment, stemming from a severe injury sustained in a motorcycle accident in August 2018.
23 Nam Decl. ¶ 4, Ex. B, Hautala Dep. 60:23-25. Based on Rutherford’s report, Telecare requested
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1 additional information from Hautala’s primary care physician, Dr. Andrew Patel. Patel signed a
2 form, provided by Telecare and filled in by Hautala, that stated Hautala was “unable to stand for
3 prolonged periods of time” and “unable to run or jog,” and that “getting up from a squat is
4 difficult.” Nam Decl., Ex. R., Medical Information Form.

5 In December 2019, Telecare rescinded its conditional offer, based on information obtained
6 during the post-offer exams. Telecare explained it had concluded that Hautala’s “permanent work
7 restrictions” precluded him “from performing all of the essential functions of the position, and
8 there is no reasonable accommodation” it could provide to enable him to perform those functions.
9 Nam Decl., Ex. Z, letter from A. Short. Telecare went on to explain that the “restrictions”
10 specifically included Hautala’s inability “to stand for prolonged periods or walk for ‘moderate’
11 distances,” “to run or jog,” and “to get down on the floor to render emergency patient care” or
12 “get[] up from a squat” without difficulty. The letter reflected Telecare’s understanding that given
13 these restrictions, Hautala would not be able to “run away from or participate in a take-down if a
14 client became violent.” *Id.*

15 Based on Telecare’s rescission of its offer, Hautala filed a charge of discrimination with
16 the EEOC. Compl. ¶ 7. After determining that there was reasonable cause to believe that Telecare
17 had violated Title I of the ADA, the EEOC filed the instant action.

18 III. DISCUSSION

19 A. Summary Judgment Standard

20 “The court shall grant summary judgment if [a] movant shows that there is no genuine
21 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R.
22 Civ. P. 56(a). A party moving for summary judgment “bears the initial responsibility of informing
23 the district court of the basis for its motion, and identifying those portions of ‘the pleadings,
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1 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,’
2 which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex Corp. v.*
3 *Catrett*, 477 U.S. 317, 323 (1986). “If ... [the] moving party carries its burden of production, the
4 nonmoving party must produce evidence to support its claim or defense.” *Nissan Fire & Marine*
5 *Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1103 (9th Cir. 2000). “If the nonmoving party fails to produce
6 enough evidence to create a genuine issue of material fact, the moving party wins the motion for
7 summary judgment.” *Id.*

9 **B. Defendant’s Motion for Summary Judgment**

10 Defendant argues that EEOC has failed to demonstrate material issues of fact on several
11 elements of its claims. For the reasons that follow, the Court agrees that EEOC has failed to meet
12 its burden of demonstrating a prima facie case of disability discrimination under the ADA.

13 *1. EEOC Bears the Burden of Establishing Prima Facie Case*

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15 Title I of the ADA prohibits discrimination “against a qualified individual on the basis of
16 disability in regard to” hiring or other privileges of employment. 42 U.S.C. § 12112(a). The plain
17 language of the statute thus protects only “qualified individuals” from employment disability
18 discrimination. *Weyer v. Twentieth Century Fox Film Corp.*, 198 F.3d 1104, 1112 (9th Cir. 2000).
19 Accordingly, the EEOC carries the initial burden of establishing that Hautala is a qualified
20 individual as part of his prima facie disability discrimination case. *See Anthony v. Trax Int’l Corp.*,
21 955 F.3d 1123, 1127 (9th Cir. 2020) (citing *Hutton v. Elf Atochem N. Am., Inc.*, 273 F.3d 884, 891
22 (9th Cir. 2001); *see Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 988 (9th Cir. 2007) (en banc)
23 (“[U]nder the ADA, an employee bears the ultimate burden of proving that [she] is ... a qualified
24 individual with a disability.”) (internal quotation marks omitted)).
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In the Ninth Circuit, “[q]ualification for a position is a two-step inquiry. The court first examines whether the individual satisfies the ‘requisite skill, experience, education and other job-related requirements’ of the position. The court then considers whether the individual ‘can perform the essential functions of such position’ with or without a reasonable accommodation.” *Bates*, 511 F.3d at 990. As noted, the burden of proof lies with the plaintiff. *Id.* (“As the plaintiff, Bates bears the burden to prove that he is ‘qualified.’”). Telecare argues that EEOC has failed to demonstrate that Hautala satisfies either prong of the inquiry. Because the Court concludes that EEOC has not demonstrated Hautala satisfied all the prerequisites of the RN position—the first prong—it does not reach the second—whether he could perform all essential functions of the job, with or without reasonable accommodation. *See Anthony*, 955 F.3d at 1134 (employer is obligated to provide reasonable accommodation “only if the individual is ‘otherwise qualified.’”).

2. Whether Claimant Satisfied Requisite Skills and “Other Job-Related Requirements” of the Position

Telecare does not deny that Hautala had the “requisite skill, experience, and education” necessary for the RN position. It argues, however, that Plaintiff lacked another essential job-related requirement: a demonstrated compassion for patients who suffer from mental illness, such as those being treated at the Shelton facility. In support of this position, Telecare cites statements Hautala undisputedly made, including that “[i]n my youth, I used to enjoy a good crazy person takedown, but as I got older, I enjoy these things less and less.” Nam Decl. ¶ 4, Ex. B, Hautala Dep. 112:1-10. Hautala also posted a comment on social media that “[F]ighting off meth heads isn’t as much fun in my 50s as it was in my 30s.” (Nam Decl. ¶ 31, Ex. CC, Hautala Dep. Vol. II 260:10-23).¹

¹ The Court has not been provided the actual documents containing these statements. However, Hautala admitted to them in deposition, and does not deny now that he made them, or claim they have been taken out of context.

1 Telecare asserts, and EEOC does not dispute, that having a “compassionate view” towards
2 mentally ill patients in crisis is a “job-related requirement” of the RN position at issue. In support,
3 Telecare submitted its “Job Description” for the position, which lists as the very first of several
4 “Essential Functions” of the job, “Demonstrates the Telecare mission, purpose, values, and beliefs
5 in everyday language and contact with the internal and external stakeholders.” Nam Decl., Ex. F.
6 In determining whether an individual is qualified for a job, “consideration shall be given to
7 the employer’s judgment as to what functions of a job are essential, and if an employer has
8 prepared a written description before advertising or interviewing applicants for the job, this
9 description shall be considered evidence of the essential functions of the job.” 42 U.S.C. §
10 12111(8). Telecare submitted additional evidence of the “employer’s judgment” regarding the
11 necessary compassion towards mentally ill patients. Tyvonne Berring, who is now Telecare’s
12 Regional Director of Operations and was at the time of Hautala’s application Telecare’s Start-Up
13 Project Administrator charged with hiring Shelton’s nursing staff, submitted a declaration stating
14 without equivocation that “Telecare would not hire anyone for an RN position who referred to
15 Telecare patients as ‘crazy’ or ‘meth heads.’ These derogatory terms run counter to Telecare’s core
16 values and mission that center on patient resilience and respect, and its philosophy focusing on
17 recovery.” Berring Decl., ¶ 17. In light of this evidence, and in the total absence of dispute from
18 EEOC, the Court concludes that having a compassionate view of mental health patients is a
19 necessary qualification for performing the RN position at the Shelton facility.
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23 In addition, Hautala’s comments referencing “a good crazy person takedown” and
24 “fighting off meth heads” support a finding that Hautala lacked this requisite compassionate view
25 of mentally ill patients necessary to perform the position at issue. Again, EEOC has failed to offer
26 evidence or argument to the contrary, essentially conceding that Hautala’s comments demonstrate

1 he lacks the requisite compassionate view of Telecare’s patients, rendering him unqualified for the
2 job. Instead, EEOC makes three arguments, all of which miss the mark.

3 First, EEOC argues that because the comments were discovered only after Telecare had
4 denied Hautala the job, they cannot, as “after-acquired” evidence, be used to excuse what EEOC
5 claims was Telecare’s discriminatory conduct. In so arguing, EEOC misconstrues the Supreme
6 Court precedent on which it relies, and overlooks Ninth Circuit caselaw distinguishing that
7 precedent on precisely the grounds presented here. *See* Pl.’s Supp. Resp. at 4 (citing *McKennon v.*
8 *Nashville Banner Publ. Co.*, 513 U.S. 352, 360 (1995)). In *McKennon*, the Supreme Court held
9 that an employer cannot use “after-acquired evidence of wrongdoing to assert that the plaintiff
10 would have been fired anyway and to excuse its discriminatory conduct.” *Anthony*, 955 F.3d at
11 1130 (citing *McKennon*, 513 U.S. at 355–56). But the claim at issue in *McKennon* was brought
12 under the Age Discrimination in Employment Act (ADEA), which unlike the ADA does not limit
13 its protection against discrimination to a “qualified individual.” *Id.* (comparing 42 U.S.C. §
14 12112(a) (“No covered entity shall discriminate against a *qualified individual* on the basis of
15 disability.”) with 29 U.S.C. § 623(a) (“It shall be unlawful for an employer ... to ... discriminate
16 against *any individual*.”) (emphasis added)). The *McKennon* employer was attempting to use the
17 after-acquired evidence to “provide a retroactive, legitimate justification for the employee’s
18 admittedly discriminatory discharge.” *Id.* Here, however, Telecare is offering the after-acquired
19 evidence to “rebut the plaintiff’s prima facie case” that Hautala was a “qualified individual” under
20 the ADA. This is precisely the use of after-acquired evidence that the Ninth Circuit has recognized
21 is allowed, despite the holding in *McKennon*. *See Anthony* at 1131 (“[A]fter-acquired evidence
22 remains available for other purposes, including to show that an individual is not qualified under
23 the ADA.”) (holding employer may use evidence obtained in discovery demonstrating plaintiff
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1 was not “qualified individual.”). A prohibition on after-acquired evidence as proposed by the
2 EEOC could have the incongruous effect of requiring employers to hire unqualified applicants, a
3 result Congress clearly did not intend, as evidenced by the plain language of the statute.

4 Second, EEOC argues that Telecare *believed* at the time of the job offer that Hautala had
5 all of the requisite “non-medical qualifications for the RN position, including whether he had ‘the
6 necessary compassionate view of patients.’” Pl.’s Supp. Resp. at 2. EEOC cites Hautala’s
7 employment references as evidence that in previous positions, Hautala was “[v]ery well-liked by
8 staff, physicians, patients and families[,]” and was “very pleasant[, and] very capable of handling
9 stressful situations/volatile climates[.]” Hitzel Decl., ¶3, Ex. A. But “an employer’s subjective
10 knowledge has no bearing on the ‘skill, experience, education and other job-related
11 [qualifications]’ that a person in fact possesses,” *Anthony*, 955 F.3d at 1129 (citing 29 C.F.R. §
12 1630.2(m)), and these comments do not cast doubt on Telecare’s claim that had it known that
13 Hautala referred so callously to mentally ill patients, it would not have offered him the position.²
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Finally, EEOC argues that allowing after-acquired evidence would cause it undue
prejudice, as Telecare voluntarily dismissed its after-acquired evidence affirmative defense early
on in litigation. But Telecare is not submitting the evidence as an affirmative defense to justify

² The Court acknowledges that one should not be surprised to hear individuals speaking about their job, in a casual conversation, in an informal or even callous manner that they would not use in a professional setting. However, Hautala apparently made at least one comment at issue in a professional setting—that is, in a communication with the EEOC about his discrimination claim. Furthermore, EEOC has not argued that this distinction should make a difference, while Telecare has explicitly stated that regardless of setting, talking about mentally ill patients in this manner disqualified Hautala for the job.

1 discriminating against a qualified individual; it is arguing that the evidence demonstrates Hautala
2 was not qualified to begin with, a critical distinction which seems to evade the EEOC. *See Anthony*,
3 955 F.3d at 1131 (highlighting “distinction between the use of after-acquired evidence to negate
4 an element of a plaintiff's prima facie case,” which is allowed; and “its use to establish a
5 nondiscriminatory motive for the adverse employment action,” which is not).

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7 Thus it remains undisputed that Hautala’s comments disqualify him for the position of RN
8 at Telecare’s Shelton facility at the first step of the Ninth Circuit’s test for a “qualified individual.”
9 As a consequence, the Court necessarily concludes that the EEOC has failed to make out a prima
10 facie case that Hautala was a “qualified individual” entitled to protection under the ADA, and its
11 claims must be dismissed.

12 IV. CONCLUSION

13 Because EEOC has failed to demonstrate Hautala was a “qualified individual” under the
14 ADA, the Court need not determine whether disputes of fact remain as to whether he was able to
15 perform the essential functions of the RN position, with or without reasonable accommodation.
16 *Anthony*, 955 F.3d at 1134. Defendant’s Motion for Summary Judgment is therefore GRANTED
17 and this case is DISMISSED. EEOC’s Motion for Partial Summary Judgment, seeking dismissal
18 of two of Telecare’s affirmative defenses, is DENIED as moot.
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20 SO ORDERED.

21 Dated: June 12, 2023.

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24 Barbara Jacobs Rothstein
25 U.S. District Court Judge
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